

IDEA–Reauthorized Statute¹

CHANGES IN INITIAL EVALUATIONS AND REEVALUATIONS

The reauthorized Individuals with Disabilities Education Act (IDEA) was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act will be effective on July 1, 2005, with the exception of some elements of the definition of “highly qualified teacher” that took effect upon the signing of the act. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education, that covers a variety of high-interest topics and brings together the statutory language related to those topics to support constituents in preparing to implement the new requirements. This document addresses provisions of IDEA regarding the alignment between IDEA and No Child Left Behind, referred to in this document as the Elementary and Secondary Education Act (ESEA) of 1965, which will take effect on July 1, 2005. It does not address any changes that may be made by the final regulations.

IDEA 2004:

1. Adds provision for parental consent for initial evaluation for children who are wards of the state.

If the child is a ward of the state and not residing with the child's parent, the agency must make reasonable efforts to obtain the informed consent from the parent of the child for an initial evaluation to determine whether the child is a child with a disability. The agency shall not be required to obtain informed consent from the parent for an initial evaluation if:

- Despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;
- The rights of the parents of the child have been terminated in accordance with state law; or
- The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

[614(a)(1)(D)(iii)]

Definition of “Ward of the State:”

The term “ward of the state” means a child who, as determined by the state where the child resides, is a foster child, is a ward of the state or is in the custody of a public child welfare agency. The term does not include a foster child who has a foster parent who meets the definition of a parent in Section 602(23). [602(36)]

2. Adds 60-day timeline to complete initial evaluation (unless state established timeline)

There is a default 60-day timeframe from receipt of parental consent for the initial evaluation until the initial evaluation is conducted, unless the state establishes its own timeframe within which the evaluation must be conducted.

The relevant timeframe shall not apply to a local educational agency (LEA) if:

- The child enrolls in a school served by the LEA after the relevant timeframe has begun and prior to a determination by the child's previous LEA as to whether the child is a child with a disability (as defined in Section 602), but only if the subsequent LEA is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent LEA agree to a specific time when the evaluation will be completed; or
- The parent of the child repeatedly fails to, or repeatedly refuses to, produce the child for evaluation.

[614(a)(1)(C)(i) and (ii)]

3. Absence of consent for an initial evaluation

If the parent of a child does not provide consent for an initial evaluation, or the parent fails to respond to a request to provide the consent, the LEA may use the due process hearing procedures described in Section 615 to obtain authority for evaluation, except to the extent inconsistent with state law relating to such parental consent. [614(a)(1)(D)(ii)(I)]

4. Procedures for evaluating a child suspected of having a specific learning disability

Notwithstanding Section 607(b), when determining whether a child has a specific learning disability as defined in Section 602:

- The LEA is not required to consider a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.
- The LEA may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures.

[614(b)(6)]

5. Procedures for reevaluations

An LEA must ensure that a reevaluation for each child with a disability is conducted in accordance with Sections 614(b) and 614(c) if:

- The LEA determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- The child's parents or teacher requests a reevaluation.
However, a reevaluation shall occur not more frequently than once a year, unless the parent and the LEA agree otherwise; and at least once every three years, unless the parent and the LEA agree that a reevaluation is unnecessary.

[614(a)(2)]

6. Exception to requirements for evaluation before a change in eligibility

An evaluation is not required before the termination of a child's eligibility if the termination of eligibility is:

- Due to graduation from secondary school with a regular high school diploma; or
- Because the child exceeds the age of eligibility for a free appropriate public education under state law.

For a child whose eligibility under IDEA terminates under circumstances described above, an LEA must provide the child with a summary of his or her academic achievement and functional performance, including recommendations on how to assist the child in meeting postsecondary goals. [614(c)(5)(B)]

7. Adds a requirement to evaluate the child's present levels of academic achievement and the related developmental needs of the child

As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the Individualized Education Program (IEP) team and other qualified professionals, as appropriate, shall, on the basis of that review, and input from the child's parents, identify what additional data, are needed to determine:

- Whether the child is a child with a disability as defined in Section 602(3);
- The educational needs of the child, or, in the case of a reevaluation of the child, whether the child continues to have such a disability and such educational needs; and
- The present levels of academic achievement and related developmental needs of the child....

[614(c)(1)(B)(i) and (ii)]